IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

Bail Appl..No. 6095 of 2007()

CRIME NO. 460/07 OF HILL PALACE POLICE STATION

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PETITIONER/ACCUSED

SOUDHAMINI, W/O VARGHESE,
AGED 52 YEARS, PERUMPILLY HOUSE,
KUREEKKAD P.O., THIRUVANKULAM.

BY ADV. SRI.T.R.S.KUMAR

RESPONDENTS: COMPLAINANT

THE STATION HOUSE OFFICER,
HILL PALACE POLICE STATION,
TRIPUNITHURA.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 09/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 6095 of 2007

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Dated this the 9th day of October, 2007

O R D E R

Application for anticipatory bail. The petitioner is the third accused. She faces allegations in a crime registered for offences, inter alia, under Sections 420 and 468 I.P.C. Altogether there are three accused persons in the crime.

2. The crux of the allegations is that the first accused entered into an agreement for sale of property with the defacto complainant, a woman. The original title deeds were handed over to the first accused in pursuance of such agreement for sale. The first accused, in collusion with accused 2 and 3 (spouses) allegedly made a criminal scheme to make unjust enrichment by offering the title deed as security. Accused 2 and 3 allegedly impersonated as the defacto complainant and her husband. They produced the original title deeds before the Co-operative Bank. They allegedly executed the necessary documents and obtained an amount of Rs. 6 lakhs as loan from the bank. The defacto complainant, on coming to realise the fraud played by the first accused, made a complaint and it was in the course of the

investigation that the mystery was resolved. Investigation is in progress. The petitioner apprehends imminent arrest. Accused 1 and 2 have already been arrested and enlarged on regular bail.

3. According to the learned counsel for the petitioner, the petitioner is absolutely innocent. Petitioner is not the one who went to the co-operative bank and the Registrar's office and executed the necessary documents. She had not pretended to be the defacto complainant. The allegations raised are totally false. According to the counsel for the petitioner, it is the defacto complainant and her husband who had themselves gone to the bank and registrar's office and executed the documents. In these circumstances anticipatory bail may be granted to the petitioner, it is prayed.

4. The application is opposed by the learned Prosecutor. All the available indications point to the complicity of the petitioner. There are no features in this case, which would justify the invocation of the extra ordinary equitable discretion under section 438 Cr.P.C. in favour of the petitioner, submits the Prosecutor. The available inputs clearly show that the defacto complainant and her husband had not availed the loan or executed the documents. It was the petitioner's husband/A2 who acted as

broker in the transaction. Petitioner and her husband had played an active role to make unjust enrichment by pledging the document before the bank. Clinching data will be available only after the thumb impression of the petitioner and the thumb impression in the document are compared. The petitioner has to be arrested and interrogated. She may not be permitted to arm herself with an order of anticipatory bail. She may be directed to resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course, submits the learned Prosecutor.

5. In the nature of the disputes and contentions raised, the learned Prosecutor was requested to place the case diary before me after flagging the relevant pages. I have gone through the case diary. Having considered all the relevant inputs, I find merit in the opposition raised by the learned Prosecutor. I am unable to find any features in this case, which would justify the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. in favour of the petitioner. This I am satisfied is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

6. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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